

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER 00-0129  
RESPONSIBLE OFFICER  
SALES TAX and WITHHOLDING TAX  
For Tax Periods: 1982-1989**

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**Issues**

**Sales and Withholding Tax** -Responsible Officer Liability

**Authority:** IC 6-2.5-9-3, IC 6-3-4-8 (f), IC 6-8.1-5-1 (b), 11 USC 523.

The taxpayer protests the assessment of responsible officer liability for unpaid business sales and withholding taxes.

**Statement of Facts**

The taxpayer was the sole proprietor of a photography business. The taxpayer failed to remit sales and withholding taxes to Indiana during the tax period 1982-1989. The taxpayer was personally assessed for the taxes and protested these assessments. A hearing was scheduled for February 27, 2002. The taxpayer did not appear for the hearing. Therefore, this decision is based upon the evidence in the file. More facts will be provided as necessary.

**Sales and Withholding Tax**-Responsible Officer Liability

**Discussion**

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;  
holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against Taxpayer pursuant to IC 6-3-4-8(f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

The taxpayer first contends that some of the assessments are for his individual income taxes. The taxpayer failed, however, to offer any evidence that any of the assessments were for his individual income tax. Indiana Department of Revenue assessments are prima facie evidence that the assessed taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8.1-5-1 (b). With no evidence to substantiate his claim, the taxpayer failed to sustain his burden of proof.

Secondly the taxpayer argues that the sales and withholding tax liabilities were discharged in bankruptcy on April 4, 1999 by the United States Bankruptcy Court, Southern District of Indiana. In support of this contention, the taxpayer cites from the “Discharge of Debtor(s)” as follows:

Any judgement heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor(s) with respect to the following:

(a) debts dischargeable under 11 U.S.C. 523.

Sales and withholding taxes are not among the taxes that are dischargeable pursuant to 11 U.S.C. 523. Therefore they were properly assessed against the taxpayer pursuant to the previously cited Indiana law.

### **Finding**

The taxpayer’s protest is denied.